IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5058 OF 2003

Mrs.Vijayalaxmi Narendra Sharma .. Appellant

Versus

Vinod Omprakash Agarwal .. Respondent

Ms.Tendulkar i/b. M.S.Karnik for appellant

Mr.P.S.Hingorani, A.P.P. for State

Mr.P.S.Dani for respondent No.1

CORAM : S.C.DHARMADHIKARI, J.

DATE : 5th October 2006.

P.C.

. Although this application is styled as one claiming leave to appeal to this Court against the order passed on 2nd June 2003 by the

learned Judicial Magistrate, First Class, Nashik in Criminal Case No.264 of 1999, both sides do not dispute that I can pass appropriate orders in my inherent jurisdiction. More so, considering the facts and circumstances of this case.

2. It is brought to my notice that the original complainant had stepped into witness box, his examination in chief is concluded and cross examination was also concluded on 17th March 2001. Thereafter, P.W.2 was in the witness box and his cross examination was partly held.

3. On the relevant date, both sides were absent so also their Advocates. Learned Magistrate recorded that parties are not interested in proceeding further. In these circumstances, for want of prosecution, he dismissed the criminal case and acquitted the accused.

4. In the peculiar facts and circumstances and when there is no case made out of lack of bonafides inaction or negligence on the part of complainant, the order dated 2nd June 2003 is quashed and set aside. Criminal case is restored to file. Criminal case No.264 of 1999 shall now proceed in accordance with law. All contentions on merits are expressly kept open. Application disposed of accordingly.

(S.C.Dharmadhikari, J)